

## §211.26

## 12 CFR Ch. II (1–1–02 Edition)

and an opportunity to present its views concerning the order.

(e) *Termination of federal branch or federal agency.* The Board may transmit to the Comptroller a recommendation that the license of a federal branch or federal agency be terminated if the Board has reasonable cause to believe that the foreign bank or any affiliate of the foreign bank has engaged in conduct for which the activities of a state branch or state agency may be terminated pursuant to this section.

(f) *Voluntary termination.* A foreign bank shall notify the Board at least 30 days prior to terminating the activities of any office. Notice pursuant to this paragraph (f) is in addition to, and does not satisfy, any other federal or state requirements relating to the termination of an office or the requirement for prior notice of the closing of a branch, pursuant to section 39 of the FDIA (12 U.S.C. 1831p).

### §211.26 Examination of offices and affiliates of foreign banks.

(a) *Conduct of examinations—(1) Examination of branches, agencies, commercial lending companies, and affiliates.* The Board may examine:

- (i) Any branch or agency of a foreign bank;
- (ii) Any commercial lending company or bank controlled by one or more foreign banks, or one or more foreign companies that control a foreign bank; and
- (iii) Any other office or affiliate of a foreign bank conducting business in any state.

(2) *Examination of representative offices.* The Board may examine any representative office in the manner and with the frequency it deems appropriate.

(b) *Coordination of examinations.* To the extent possible, the Board shall coordinate its examinations of the U.S. offices and U.S. affiliates of a foreign bank with the licensing authority and, in the case of an insured branch, the Federal Deposit Insurance Corporation (FDIC), including through simultaneous examinations of the U.S. offices and U.S. affiliates of a foreign bank.

(c) *Frequency of on-site examination—(1) General.* Each branch or agency of a foreign bank shall be examined on-site

at least once during each 12-month period (beginning on the date the most recent examination of the office ended) by—

- (i) The Board;
- (ii) The FDIC, if the branch of the foreign bank accepts or maintains insured deposits;
- (iii) The Comptroller, if the branch or agency of the foreign bank is licensed by the Comptroller; or
- (iv) The state supervisor, if the office of the foreign bank is licensed or chartered by the state.

(2) *18-month cycle for certain small institutions—(i) Mandatory standards.* The Board may conduct a full-scope, on-site examination at least once during each 18-month period, rather than each 12-month period as required in paragraph (c)(1) of this section, if the branch or agency—

(A) Has total assets of \$250 million or less;

(B) Has received a composite ROCA supervisory rating (which rates risk management, operational controls, compliance, and asset quality) of 1 or 2 at its most recent examination;

(C) Satisfies the requirement of either the following paragraph (c)(2)(i)(C)(I) or (2):

(I) The foreign bank's most recently reported capital adequacy position consists of, or is equivalent to, tier 1 and total risk-based capital ratios of at least 6 percent and 10 percent, respectively, on a consolidated basis; or

(2) The branch or agency has maintained on a daily basis, over the past three quarters, eligible assets in an amount not less than 108 percent of the preceding quarter's average third-party liabilities (determined consistent with applicable federal and state law) and sufficient liquidity is currently available to meet its obligations to third parties;

(D) Is not subject to a formal enforcement action or order by the Board, FDIC, or OCC; and

(E) Has not experienced a change in control during the preceding 12-month period in which a full-scope, on-site examination would have been required but for this section.

(ii) *Discretionary standards.* In determining whether a branch or agency of

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a foreign bank that meets the standards of paragraph (c)(2)(i) of this section should not be eligible for an 18-month examination cycle pursuant to this paragraph (c)(2), the Board may consider additional factors, including whether—

(A) Any of the individual components of the ROCA supervisory rating of a branch or agency of a foreign bank is rated “3” or worse;

(B) The results of any off-site surveillance indicate a deterioration in the condition of the office;

(C) The size, relative importance, and role of a particular office when reviewed in the context of the foreign bank’s entire U.S. operations otherwise necessitate an annual examination; and

(D) The condition of the foreign bank gives rise to such a need.

(3) *Authority to conduct more frequent examinations.* Nothing in paragraphs (c)(1) and (2) of this section limits the authority of the Board to examine any U.S. branch or agency of a foreign bank as frequently as it deems necessary.

### § 211.27 Disclosure of supervisory information to foreign supervisors.

(a) *Disclosure by Board.* The Board may disclose information obtained in the course of exercising its supervisory or examination authority to a foreign bank regulatory or supervisory authority, if the Board determines that disclosure is appropriate for bank supervisory or regulatory purposes and will not prejudice the interests of the United States.

(b) *Confidentiality.* Before making any disclosure of information pursuant to paragraph (a) of this section, the Board shall obtain, to the extent necessary, the agreement of the foreign bank regulatory or supervisory authority to maintain the confidentiality of such information to the extent possible under applicable law.

### § 211.28 Provisions applicable to branches and agencies: limitation on loans to one borrower.

(a) *Limitation on loans to one borrower.* Except as provided in paragraph (b) of this section, the total loans and extensions of credit by all the state branches and state agencies of a foreign bank

outstanding to a single borrower at one time shall be aggregated with the total loans and extensions of credit by all federal branches and federal agencies of the same foreign bank outstanding to such borrower at the time; and shall be subject to the limitations and other provisions of section 5200 of the Revised Statutes (12 U.S.C. 84), and the regulations promulgated thereunder, in the same manner that extensions of credit by a federal branch or federal agency are subject to section 4(b) of the IBA (12 U.S.C. 3102(b)) as if such state branches and state agencies were federal branches and federal agencies.

(b) *Preexisting loans and extensions of credit.* Any loans or extensions of credit to a single borrower that were originated prior to December 19, 1991, by a state branch or state agency of the same foreign bank and that, when aggregated with loans and extensions of credit by all other branches and agencies of the foreign bank, exceed the limits set forth in paragraph (a) of this section, may be brought into compliance with such limitations through routine repayment, provided that any new loans or extensions of credit (including renewals of existing unfunded credit lines, or extensions of the maturities of existing loans) to the same borrower shall comply with the limits set forth in paragraph (a) of this section.

### § 211.29 Applications by state branches and state agencies to conduct activities not permissible for federal branches.

(a) *Scope.* A state branch or state agency shall file with the Board a prior written application for permission to engage in or continue to engage in any type of activity that:

(1) Is not permissible for a federal branch, pursuant to statute, regulation, official bulletin or circular, or order or interpretation issued in writing by the Comptroller; or

(2) Is rendered impermissible due to a subsequent change in statute, regulation, official bulletin or circular, written order or interpretation, or decision of a court of competent jurisdiction.

(b) *Exceptions.* No application shall be required by a state branch or state agency to conduct any activity that is